12 months and therefore you can only hold a personal judgment against the 1st defendant. I am not bound to pay by reason of section 2 of the Public Authorities Protection Ordinance"? Neither common sense nor justice can admit such a situation as it is clear in law that the employer is liable to a third party for tortious acts of its officers or servants in the course of employment, and, in my view, rule 11 of Order 16 applies, as there is no question but that the 2nd defendant is a party who ought to have been joined to enable the court effectually and completely to adjudicate upon and to settle all the questions involving in the cause.

The application is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Goh & Lim.*

VINCENT KOH & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Ambrose J.) September 13, 1965]

[Singapore — Magistrate's Appeal No. 24 of 1965]

Bribery and Corruption — Illegal gratification as inducement to show favour in relation to principal's affairs — Favour received in refraining to take action in respect of offence — Offence not proved — Meaning of "principal" — Prevention of Corruption Ordinance, 1960, ss. 2, 6 & 9.

Constitutional Law — "Government" — Meaning of — Constitution of Singapore of 1963 — Malaysia Act, 1963.

This was an appeal against the conviction of the first and second appellants under section 6(a) of the Prevention of Corruption Ordinance. It was alleged that the first appellant who was a police constable obtained $100 as an inducement for showing favour in relation to his principal's affairs by refusing to take police action against one *C* who was riding a motor cycle for an offence against the Motor Vehicles (Third Party Risks and Compensation) Ordinance, 1960. However the prosecution proved that at the material time there was an insurance policy in force covering the use of the motor cycle.

It was argued on behalf of the first appellant that (a) as there was in fact no offence to report the first appellant was not acting in relation to the affairs of his principal by representing that *C* committed an offence against the law; (b) as the first appellant was at all material times employed by the Government of Malaysia he was not liable under the Prevention of Corruption Ordinance, 1960 as the word "Government" in that Ordinance means the Government of Singapore.

As regards the second appellant the learned district judge said that on the evidence he preferred to believe the prosecution and accordingly found him guilty.

Held: (1) section 9(1) of the Prevention of Corruption Ordinance, 1960, provides that where in proceedings for an offence under section 6(a) it is proved that an agent had corruptly obtained any gratification having reason to believe or suspect that it was offered as an inducement for showing any favour to any person in relation to his principal's affairs, he will be guilty notwithstanding that such favour was not in relation to his principal's affairs; he shall be guilty notwithstanding that such favour was not in relation to his principal's affairs;

(2) the Prevention of Corruption Ordinance, 1960, should be construed, after Malaysia Day, with such modifications and adaptations as may be necessary to bring it into conformity with the Constitution of the State of Singapore and the Malaysia Act and therefore the word "Government" must be construed to mean not only the Government of Singapore but also the Government of Malaysia and the Prevention of Corruption Ordinance applied to the first appellant;

(3) the learned district judge was wrong in deciding the case against the second appellant because although the district judge believed the prosecution and did not believe the second appellant he should have considered the further question whether, even if he did not believe the second appellant, his evidence raised a reasonable doubt as to his guilt.

Case referred to:—

(1) *Hiralal Badlo* v. *R.* [1950] M.L.J. 96.

CRIMINAL APPEAL.

Dato' David Marshall for the first appellant.

M. N. Samy for the second appellant.

Dalip Singh (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Ambrose J.: In this case the first appellant was charged in the First Criminal District Court under section 6(a) of the Prevention of Corruption Ordinance, 1960, with corruptly obtaining for himself a gratification as an inducement to show favour in relation to his principal's affairs. He was alleged to have committed the offence on the 23rd May, 1964, at about 5.40 p.m. at No. 327-G Tampines Road 7½ milestone, Singapore. The charge alleged that he was a person serving under the Government as a police constable in the Royal Malaysia Police Force; that he being such a person corruptly obtained for himself from one Cha Ah Kaw-a gratification of $100 as an inducement to show favour to the said Cha Ah Kaw, in relation to his principal's affairs; and that favour was to be shown by refraining from taking police action against the said Cha Ah Kaw for an alleged offence against certain provisions of the Traffic Ordinance. The first appellant was convicted and sentenced to 6 months' imprisonment.

The second appellant was charged in the same case under section 6(a) of the same Ordinance with corruptly attempting to obtain for the first appellant a gratification as an inducement to show favour in relation to his principal's affairs. He was alleged to have committed the offence on the same day at about 5.30 p.m. at the same place. The second appellant was convicted and sentenced to 2 months' imprisonment.

The first submission of counsel for the first appellant proceeds as follows. According to the evidence of the prosecution, on the 22nd May,

1964, Cha Ah Kaw was stopped by the first appellant, while he was riding Chia Wan Foong's motor cycle, to see if his user of the motor cycle was covered by a policy of insurance in respect of third-party risks; the first appellant was taken to Cha's house; there he was shown an insurance certificate which had expired and only covered Chia Wan Foong; and the first appellant told Cha that he could be fined $250. It was alleged that the first appellant was to show favour by refraining from taking police action against Cha for using a motor cycle whilst there was not in force in relation to the user of the motor cycle by Cha a policy of insurance in respect of third-party risks complying with the requirements of the Motor Vehicles (Third-Party Risks and Compensation) Ordinance, 1960. The prosecution, however, proved that at the material time there was an insurance policy covering the user of the motor cycle by Cha. No offence was therefore committed either by Cha or Chia Wan Foong. On the evidence adduced by the prosecution, there was accordingly nothing to report. Even if money was obtained by the first appellant, it was not obtained as an inducement to show favour to Cha in relation to the affairs of the principal of the first appellant. The first appellant was not acting in relation to the affairs of his principal by representing to Cha that he had committed an offence against the law because Cha had committed no offence. Counsel cites *Hiralal Badlo* v. *Rex*,[1] in support of his submission.

In my view, I cannot accede to this submission for the reason that the decision in *Hiralal Badlo* v. *Rex* was nullified by section 9(1) of the Prevention of Corruption Ordinance, 1960. This subsection provides that where in proceedings for any offence under section 6(a) it is proved that an agent corruptly obtained any gratification, having reason to believe or suspect that it was offered as an inducement for showing any favour to any person in relation to his principal's affairs, he shall be guilty notwithstanding that such favour was not in relation to his principal's affairs.

The second submission of counsel for the first appellant proceeds as follows. Section 6(a) of the Prevention of Corruption Ordinance, 1960, provides for punishment of an agent corruptly obtaining a gratification as an inducement or reward for doing or forbearing to do any act in relation to his principal's affairs, or for showing or forbearing to show favour of disfavour to any person in relation to his principal's affairs. Section 2 of this Ordinance provides as follows:

> "In this Ordinance, unless the context otherwise requires—
>
> 'agent' means any person employed by or acting for another, and includes....a person serving under the Crown or the Government....
>
> 'principal'....in the case of a person serving under the Crown or Government....includes the Crown or the Government as the case may be."

The charge does not allege that the first appellant was an agent. It alleges that the first appellant was a person serving under the Government as a police constable in the Royal Malaysia Police Force. In section 2 of the Prevention of Corruption Ordinance, 1960, the word "Government" means the Government of the State of Singapore: see section 2 of the Interpretation and General Clauses Ordinance (Cap. 2) of Singapore, and section 121 of the Constitution of the State of Singapore of 1959. A police constable serving in the Royal Malaysia Police Force is a person serving under the Government of the Federation of Malaysia and not under the Government of the State of Singapore. The Prevention of Corruption Ordinance, 1960, does not apply to the first appellant because he was not a person serving under the Government of the State of Singapore at the material time.

In my opinion, the Prevention of Corruption Ordinance, 1960, has to be construed for the purposes of the present case with such modifications and adaptations as may be necessary to bring it into conformity with the Constitution of the State of Singapore of 1963 and the Malaysia Act, 1963. Article 105(1) of the Constitution of the State of Singapore of 1963 provides as follows:

> "Subject to the provisions of this Article and to any provision made on or after Malaysia Day by or under Federal law or State law, all existing laws shall continue in force on and after the coming into operation of this Constitution, and all laws which have not been brought into force by the coming into operation of this Constitution may, subject as aforesaid, be brought into force on or after its coming into operation, but all such laws shall, subject to the provisions of this Article, be construed as from the coming into operation of this Constitution with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution and the Malaysia Act."

Malaysia was established on the 16th September, 1963, by a federation of the existing states of the Federation of Malaya and the States of Sabah, Sarawak and Singapore. From that day until the 9th August, 1965, when Singapore ceased to be a State of Malaysia, executive authority was exercised in Singapore by the Government of the State of Singapore and the Government of the Federation of Malaysia. In my opinion the word "Government" in section 2 of the Prevention of Corruption Ordinance, 1960, must be construed to mean not only the Government of the State of Singapore but also the Government of the Federation of Malaysia, if the Ordinance is to be adapted to bring it into conformity with the changes brought about by the Constitution of the State of Singapore, 1963, and the Malaysia Act, 1963. Furthermore, section 73(3) of the Malaysia Act, 1963, provides as follows:

"Subject to the following provisions of this Part, the present laws of the Borneo States and of Singapore shall, on and after Malaysia Day, be treated as federal laws in so far as they are laws which could not be passed after Malaysia Day by the State Legislature, and otherwise as State laws."

The Prevention of Corruption Ordinance, 1960, could not be passed after Malaysia Day by the Singapore Legislature because it comes under the subject of criminal law, which is in the Federal List in the Ninth Schedule to the Constitution of Malaysia, and the Ordinance must therefore be treated as a federal law. This is a further reason for adapting the Ordinance to bring it into conformity with the constitutional changes referred to above by construing the word "Government" in section 2 to mean not only the Government of the State of Singapore but also the Government of the Federation of Malaysia. For the above reasons I hold that the Prevention of Corruption Ordinance, 1960, applies to the first appellant.

I find no substance in the other submissions made by counsel for the first appellant. I accordingly dismiss the appeal of the first appellant and affirm the conviction and sentence.

I now turn to the appeal of the second appellant. In considering the case against the second appellant, the district judge said that the only question for him to decide was which side he was to believe, that he preferred to believe the prosecution, and that he acordingly found the second appellant guilty. In my opinion, the district judge erred in not considering the further question whether, even if the district judge did not believe the second appellant, his evidence raised a reasonable doubt as to his guilt. I therefore allow the appeal of the second appellant and set aside the conviction and sentence and acquit him.

Appeal of first appellant dismissed.
Appeal of second appellant allowed.

Solicitors: *David Marshall; M. N. Samy.*

TAN KAH ENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Ambrose J.) September 16, 1965]

[Singapore — Criminal Appeal from Magistrate's Court No. 249 of 1964]

Criminal Procedure — Sentence — Fine — Imposition of.

Criminal Procedure — First offender under 21 — Imprisonment — Conditional discharge.

Gaming — Assisting in carrying on a public lottery — First Offender — Gravity of offence.

The appellant a seamstress aged 17, was convicted of assisting in carrying on a public lottery contrary to section 4(1)(c) of the Common Gaming Houses Ordinance, 1961, and sentenced to a fine of $3,000 or, in default, 6 months' imprisonment. She appealed against sentence. At the time the appeal was heard she was a maidservant earning $50 per month.

Held: the fine of $3,000 was manifestly excessive; a fine should always be related to the means of the offender; the imposition of a fine beyond the appellant's means or 6 months' imprisonment in default of payment was tantamount to sentencing the appellant to 6 months' imprisonment without the option of a fine.

Per curiam: It is desirable that as far as possible a first offender under the age of 21 years should be kept out of prison, unless the offence is so serious that a sentence of imprisonment has to be imposed. Assisting in carrying on a public lottery is not so serious an offence. Before imposing imprisonment on an offender under 21, the court must be of the opinion that no other method of dealing with the offender is appropriate.

MAGISTRATE'S CRIMINAL APPEAL.

A. J. Braga for the appellant.

Dalip Singh (Deputy Public Prosecutor) for the respondent.

Ambrose J.: In this case the appellant was convicted of assisting in carrying on a public lottery, an offence against section 4(1)(c) of the Common Gaming Houses Ordinance, 1961, and sentenced to a fine of $3,000 or, in default, 6 months' imprisonment. The appellant abandoned her appeal against conviction and proceeded with her appeal against sentence.

The appellant was a seamstress when she was convicted, and a maidservant earning $50 per month when her appeal was heard. The fine of $3,000 seemed to me to be manifestly excessive. It appeared to have been imposed with a view to punishing the promoters of the public lottery in question. A fine should always be related to the means of the offender. The imposition of a fine beyond the appellant's means or six months' imprisonment in default of payment was tantamount to sentencing the appellant to six months' imprisonment without the option of a fine. The point to be considered was whether upon the facts of the present case such a sentence was appropriate. The appellant was a first offender and seventeen years old at the time of her conviction. It is desirable that, as far as possible, a first offender under the age of twenty-one years should be kept out of prison, unless the offence is so serious that a sentence of imprisonment has to be imposed. I did not think that assisting in carrying on a public lottery is so serious an offence. Before imposing imprisonment on an offender under twenty-one, the court must be of the opinion that no other method of dealing with the offender is appropriate. I was of the opinion that it would be more beneficial to the appellant and to the community at large to discharge her subject to the condition that she commits no offence during a period of twelve months. It seemed to me that a discharge subject to such a condition would deter the appellant from committing a similar offence for twelve months more effectively than a fine within her means, because in